

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**LINDENWOOD CARE CORP., d/b/a LOVING CARE HOME,
APPELLANT**

vs.

**MISSOURI DEPARTMENT OF SOCIAL SERVICES, MO HEALTHNET,
RESPONDENT**

DOCKET NUMBER WD77654

DATE: JUNE 2, 2015

Appeal from:

The Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge

Appellate Judges:

Division Four: Alok Ahuja, C.J., Joseph M. Ellis, J. and James E. Welsh, J.

Attorneys:

Randall C. Cahill, for Appellant

Ross A. Brown, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

LINDENWOOD CARE CORP., d/b/a LOVING CARE HOME, APPELLANT

v.

**MISSOURI DEPARTMENT OF SOCIAL SERVICES, MO HEALTHNET,
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WD77654

Cole County, Missouri

Before Division Four Judges: Alok Ahuja, C.J., Joseph M. Ellis, J. and James E. Welsh, J.

Since 2006, Appellant Lindenwood Care Corporation d/b/a Loving Care Home has participated as a vendor in the Medicaid Personal Care Program. As part of the program, the Missouri Department of Social Services, Mo HealthNet Division (“the Division”) reimbursed Appellant for the personal care services provided to Appellant’s Medicaid-eligible residents.

In 2010, the Division conducted an unannounced, post-payment review of Appellant’s billing records related to the Medicaid Personal Care Program. During the review, a Division employee, Cathy Schulte, provided Appellant with a list of residents and requested Appellant’s billing records for the personal care services that Appellant provided to those residents from April 2009 through November 2009. Following the review, the Division determined that Appellant made the following billing errors: (1) no documentation of services provided during the billing period; (2) no residents’ signatures on the personal care time sheets; and (3) billing for the full allocation of personal care units for the billing period, but no services delivered on at least one day during that period. As a result of these errors, the Division determined that Appellant should be sanctioned and that Appellant should reimburse the Division for the overpaid funds.

Appellant subsequently filed a complaint with the Administrative Hearing Commission (“the Commission”) in which it alleged that the Division’s review was erroneous. After a hearing on the matter, the Commission determined that, due to inadequate documentation, Appellant was subject to sanctioning by the Division and had to repay the Division the overpaid funds. The Commission’s decision was affirmed in the Circuit Court of Cole County

Appellant now raises five points of error on appeal from the Commission’s decision.

AFFIRMED

Division Four holds:

(1) The Commission did not err in failing to grant judgment on the pleadings in Appellant's favor due to perceived deficiencies in the Division's answer. First, the record does not reflect that Appellant requested the Commission grant judgment on the pleadings at anytime. Moreover, Appellant waived any challenge to the sufficiency of the Division's answer by failing to raise such issues thirty days in advance of the hearing before the Commission.

(2) The Commission did not err by entering judgment in the Division's favor because Appellant's contentions regarding Schulte's lack of knowledge as to the definition of a "residential care facility" and the assumptions Schulte made during the review go to Schulte's credibility as a witness; thus, it was for the Commission, not this Court, to assess and determine the weight and credibility of Schulte's testimony.

(3) The Commission did not err in determining that Appellant was subject to sanctions due to inadequate documentation because there is competent and substantial evidence in the record that Appellant failed to properly document the personal care services it provided to its residents in that all personal care documents contain the signature of the personal aide that administered the personal care services instead of the signature of the resident or a "responsible person" as is required pursuant to Missouri regulation.

(4) The Commission did not err in admitting Exhibit I into evidence because, under the relaxed business record standard of § 536.070(10), Schulte's lack of personal knowledge regarding the exhibit did not affect its admissibility, but rather its weight as evidence.

(5) The record is devoid of any evidence indicating that the Division acted with racial animus in determining that Appellant was subject to sanctions.

Opinion by Joseph M. Ellis, Judge

Date: June 2, 2015

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